

Before the  
Administrative Hearing Commission  
State of Missouri



COMPREHENSIVE INDEPENDENT  
LIVING GOALS, INC.,

Petitioner,

v.

DEPARTMENT OF SOCIAL SERVICES,  
MISSOURI MEDICAID AND AUDIT  
COMPLIANCE UNIT,

Respondent.

No. 13-1262 SP

**DECISION**

Petitioner Comprehensive Independent Living Goals, Inc., seeks review of two decisions of Respondent Department of Social Services, Missouri Medicaid Audit and Compliance Unit to recoup a total of \$9,406.79 in Medicaid overpayments. We dismiss because Petitioner appealed too late.

**Procedure**

Petitioner filed a letter, which we treated as a complaint or petition, with this Commission by certified mail on July 9, 2013, appealing two decisions of the Department. In lieu of an answer, the Department filed a motion for involuntary dismissal on August 5, 2013. We notified Petitioner that it should file any response to the motion by August 20, 2013, but it filed nothing.

We may grant a motion for involuntary dismissal based on a preponderance of the admissible evidence. 1 CSR 15-3.436(3).<sup>1</sup> Admissible evidence includes allegations contained in the complaint, stipulations, or other evidence admissible under the law. *Id.* If the motion relies on matters other than the allegations contained in the complaint, or stipulations, then we must treat it as one for summary decision under 1 CSR 15-3.446, or convene an evidentiary hearing on the motion.

The findings of fact below are taken from Petitioner's complaint, and certified records the Department filed with its motion. We therefore treat the motion as one for summary decision. An evidentiary hearing is not necessary.

### **Findings of Fact**

1. Petitioner Comprehensive Independent Living Goals, Inc., is a Missouri Medicaid services provider.

2. Respondent Department of Social Services, Missouri Medicaid Audit and Compliance Unit conducted an audit of Petitioner's records and decided Petitioner had been overpaid a total of \$9,406.79 in Missouri Medicaid reimbursements. The Department issued Petitioner two decision letters<sup>2</sup>, both dated June 4, 2013, and mailed them to Petitioner by certified mail on June 5, 2013.

3. The Department's decision letters include the following language:

If you were adversely affected by this decision, you may appeal this decision to the Administrative Hearing Commission. To appeal, you must file a petition with the Administrative Hearing Commission within 30 days from the date of

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<sup>1</sup> References to "CSR" are to the Missouri State Code of Regulations, as current with amendments included in the Missouri Register through the most recent update.

<sup>2</sup> One letter identifies \$3,841.25 in overpayments due to a specified type of billing errors, and the other identifies \$6,565.54 in overpayments due to different billing errors.

mailing or delivery of this decision, whichever is earlier; except that claims of less than \$500 may be accumulated until such claims total that sum and, at which time, you have 90 days to file the petition. If any such petition is sent by registered mail or certified mail, the petition will be deemed filed on the date it is mailed. If any such petition is sent by any method other than registered mail or certified mail, it will be deemed filed on the date it is received by the Commission. **Appealing this decision can only be made to the Administrative Hearing Commission and not to MMAC or MHD.**

[Underlining added, bold in original.]<sup>3</sup>

4. Petitioner mailed its appeal of the Department's two decisions to this Commission by certified mail on July 9, 2013.

### **Conclusions of Law**

We have jurisdiction. § 208.156.2, RSMo (2000) and § 621.055, RSMo (Supp. 2012).

Sections 208.156.2 and 621.055.1 both provide that “[a]ny person authorized under section 208.153 to provide services for which benefit payments are authorized under section 208.152” may seek review with this Commission of certain actions of the Department in regard to payments.

Section 208.156.8 establishes requirements for seeking review, including a time limitation: An aggrieved provider “shall have thirty days from the date of mailing or delivery of a decision of the department of social services or its designated division in which to file his petition for review” with this Commission. (Emphasis added.) And § 621.055.3 explains what the date of mailing is:

Any decision of the department of social services that is subject to appeal to the administrative hearing commission pursuant to

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<sup>3</sup> Exhibits A and B.

subsection 1 of this section shall contain a notice of the right to appeal in substantially the following language:

If you were adversely affected by this decision, you may appeal this decision to the administrative hearing commission. To appeal, you must file a petition with the administrative hearing commission within thirty days from the date of mailing or delivery of this decision, whichever is earlier; except that claims of less than five hundred dollars may be accumulated until such claims total that sum and, at which time, you have ninety days to file the petition. If any such petition is sent by registered mail or certified mail, the petition will be deemed filed on the date it is mailed. If any such petition is sent by any method other than registered mail or certified mail, it will be deemed filed on the date it is received by the commission.

[Underlining added.]

Here, the Department mailed its decision letters to Petitioner on Wednesday, June 5, 2013. By law, § 208.156.8 and § 621.055.3, Petitioner had 30 days in which to appeal, or until Friday, July 5, 2103. But Petitioner mailed its complaint, or petition, by certified mail on July 9, 2013, which is treated as the date of filing. Therefore, Petitioner appealed too late.

We note that in Petitioner's cover letter accompanying its appeal to this Commission, Petitioner explains it lost track of the time for filing the appeal and asks us to accept its appeal anyway. We cannot. As a creature of statute, we can exercise only those powers conferred by law, and cannot expand them. *Livingston Manor, Inc. v. Dep't of Soc. Servs., Div. of Family Servs.*, 809 S.W.2d 153, 156 (Mo. App. W.D. 1991). Therefore, we are bound to apply § 208.156.8's time limit.

Because Petitioner failed to timely appeal, we must dismiss.

### **Summary**

The Department's motion to dismiss is granted.

The hearing scheduled for November 1, 2013 is canceled.

SO ORDERED on September 11, 2013.

*\s\ Alana M. Barragán-Scott*  
ALANA M. BARRAGÁN-SCOTT  
Commissioner